104

S. Hrg. 104–664

NATIONAL FINE CENTER

Y 4. G 74/9: S. HRG. 104-664

National Fine Center, S. Hrg. 104-6...

HEARING

BEFORE THE

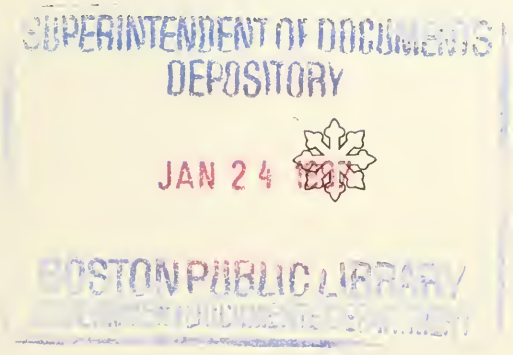
COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 17, 1996

Printed for the use of the Committee on Governmental Affairs



U.S. GOVERNMENT PRINTING OFFICE

26–048 CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053762-2

04

S. Hrg. 104–664

NATIONAL FINE CENTER

4. G 74/9: S. HRG. 104-664

ational Fine Center, S. Hrg. 104-6...

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 17, 1996

Printed for the use of the Committee on Governmental Affairs

SUPERINTENDENT OF DOCUMENTS
DEPOSITORY
JAN 24 1997
BOSTON PUBLIC LIBRARY

U.S. GOVERNMENT PRINTING OFFICE
26–048 CC WASHINGTON : 1996

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-053762-2

COMMITTEE ON GOVERNMENTAL AFFAIRS

TED STEVENS, Alaska, *Chairman*

WILLIAM V. ROTH, Jr., Delaware	JOHN GLENN, Ohio
WILLIAM S. COHEN, Maine	SAM NUNN, Georgia
FRED THOMPSON, Tennessee	CARL LEVIN, Michigan
PETE V. DOMENICI, New Mexico	DAVID PRYOR, Arkansas
THAD COCHRAN, Mississippi	JOSEPH I. LIEBERMAN, Connecticut
JOHN McCAIN, Arizona	DANIEL K. AKAKA, Hawaii
BOB SMITH, New Hampshire	BYRON L. DORGAN, North Dakota

Albert L. McDermott, *Staff Director*
John Raidt, *Professional Staff*
Leonard Weiss, *Minority Staff Director*
Michal Sue Prosser, *Chief Clerk*

CONTENTS

Opening statements: Page
Senator McCain 1
Senator Dorgan 2

WITNESSES

WEDNESDAY, JULY 17, 1996

William Stanley "Stan" Hawthorne, C.P.A., Partner, Coopers and Lybrand L.L.P. 4
Debra Cohn, Office of the Deputy Attorney General, Department of Justice 8
Clarence A. Lee, Jr., Associate Director for Management and Operations, Administrative Office of the United States Courts 15
David Beatty, Executive Director, National Victim Center 17

ALPHABETICAL LIST OF WITNESSES

Beatty, David:
Testimony 17
Prepared statement 20
Cohn, Debra:
Testimony 8
Prepared statement 11
Hawthorne, William Stanley ("Stan"):
Testimony 4
Prepared statement 7
Lee, Clarence A. Jr.:
Testimony 15
Prepared statement 16

NATIONAL FINE CENTER

WEDNESDAY, JULY 17, 1996

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3:05 p.m., in room SD–342, Dirksen Senate Office Building, Hon. John McCain presiding.

Present: Senators McCain and Dorgan.

OPENING STATEMENT OF SENATOR McCAIN

Senator MCCAIN. Senator Dorgan is on his way, but since I do not think he will be particularly illuminated by my opening statement, we will proceed with the hearing.

I would like to welcome our witnesses today and thank you for attending today's hearing on the National Fine Center. We hope to accomplish three goals today. One, to examine the recommendation by Coopers and Lybrand to terminate this troubled project; two, discuss how to efficiently and effectively shut it down; and three, identify suitable alternatives for improving the accounting and collection of criminal debt.

To begin, I would like to provide a brief summary of this issue. Congress authorized the National Fine Center in 1987. The Administrative Office of the U.S. Courts was called on to create a highly automated centralized data base to help collect nearly $1.5 billion in criminal penalties assessed each year. Crime fine revenues are used to finance vital victim assistance programs.

Unfortunately, the Government's record of collecting these debts is not good. By some estimates, an astounding $5.4 billion in criminal debt remains outstanding, and I want to emphasize that a significant portion of this money is uncollectible because judgments often exceed debtors' ability to pay. However, no one disagrees that collections can be vastly improved. Bringing in even a fraction of the billions owed would mean a world of difference to victims.

Congress envisioned that creating a national facility to centrally track and receive criminal debt would improve fine enforcement, which in many Federal judicial districts has been a disorganized and low priority function. That is why Congress and victim advocacy groups permitted the AO to dip into the Crime Victim Fund to the tune of $25 million to finance the Fine Center. The expectation was that enhanced collections from improved tracking would more than offset the cost of the project.

Unfortunately, our experience with the Fine Center has fallen far short of our expectations. Last year, this Committee held a hearing

at which the Department of Justice, the General Accounting Office, and the victim advocates expressed serious concern about the direction of the project. Eleven million dollars had been spent from the Crime Victim Fund with very little to show for the effort. This is money that could have provided vital services to victims but instead was expended on a fruitless bureaucratic exercise.

In response to continued concern and criticism of the project, the Administrative Office, at our urging, took a time out and ordered an independent analysis of the project. I applaud them for taking that step.

On May 27, the independent contractor, Coopers and Lybrand, submitted its report on the NFC, indicating that the project was neither feasible nor cost beneficial at this time. They recommended that it be terminated. I will not recap the report now. I am sure our witnesses will highlight the findings.

I would only note that the AO, the Department of Justice, and the victims groups agree that it should be shut down before additional sums of crime victim money are squandered.

Termination of the project raises many serious issues, such as how to facilitate an appropriate transition without disrupting case management, how leftover NFC finances and real property will be disposed of in a manner that is fair to victims, and most importantly, where do we go from here.

The Coopers and Lybrand report recommends several alternatives to improved debt accounting and enforcement. They include eliminating the need to track many cases by requiring up-front payment and creating a model enforcement program in a single judicial district which could be expanded to other jurisdictions. Such an effort will require resources, organization, and cooperation among many different agencies.

After this hearing, I hope to work with Senator Dorgan and others to introduce a bill calling for the development of a pilot plan, including a cost-benefit analysis, to ensure that further investment in criminal debt tracking and enforcement will yield tangible benefits to the justice system and victims of crime. In that plan, I would like us to consider authorizing a demonstration of privatizing delinquent debt collection. This, to me, seems like a promising solution which should be seriously considered.

I look forward to hearing the testimony.

I would also like to express my appreciation to my friend and accomplice in this effort, Senator Dorgan, who has been a steadfast advocate of victims' rights and a person who has worked assiduously in this effort. I thank you, Senator Dorgan, and any opening statement you would like to make will be received.

OPENING STATEMENT OF SENATOR DORGAN

Senator DORGAN. Senator McCain, thank you very much.

I will not repeat the general tenor of his comments. I am very pleased to work with Senator McCain on this issue, which has been moving along for a couple of years now. The fact is, far too much money has been spent, too much time has been taken, and too few results have come from it all.

We decided to have an independent look at what is going on. The independent analysis that we have reviewed recommends that we

terminate the National Fine Center. It is a dramatic and abrupt change, but it seems to me when you discover that something that someone is doing cannot accomplish the end results, the time is at hand to say, look, let us stop this. Let us move in a different direction. What we care about is getting results.

This is a circumstance where people are ordered to pay fines and restitution to the Federal Government, and we found, in fact, in one district alone that they did not even have addresses on a third of the people that were on their list that owed them fines and restitution. They did not even have addresses. How are you going to get money from people if you do not know where they are?

The whole system, in my judgment, was fundamentally flawed, so we were going to fix it by a National Fine Center, but it became a bureaucratic Rube Goldberg device of some sort that simply is unworkable. So we come to this point on Wednesday, July 19, 1996.

This will not be the last of the hearings. We intend to make sure this problem gets fixed. This is important to victims. It is also important to our system of justice in this country that, if a fine is levied or a restitution order made, those against whom that fine has been levied have a responsibility to pay up.

Senator McCain, I really appreciate your leadership and I would ask that a formal statement be put in the record.

Senator MCCAIN. Without objection. I want to thank you again.

[The prepared statement of Senator Dorgan follows:]

PREPARED STATEMENT OF SENATOR DORGAN

Almost one year ago today, the Governmental Affairs Committee held a hearing on the status of the troubled National Fine Center. The Administrative Office of the U.S. Courts has spent over $11 million from the Crime Victims Fund to develop a centralized national database to track federal criminal debt. Despite this investment, federal criminal debt has grown from $300 million in 1985 to more than $5 billion in 1995.

Despite the obvious and staggering need to better track our climbing federal criminal debt, progress on this database has been lackluster at best. For several years, the General Accounting Office and the Department of Justice have identified lingering and serious problems with its implementation. In fact, at last year's hearing, the General Accounting Office testified that "it is difficult for us to have confidence at this point that the Administrative Office can definitely fulfill the mandate that Congress laid out for them for the National Fine Center."

I shared the General Accounting Office's lack of confidence in the Administrative Office's ability to carry out its responsibility to create a workable database. That is why Senator McCain and I pushed for an independent comprehensive review of the Fine Center. As a result of the concerns raised at last year's hearing, the Administrative Office decided to take a time out from implementing the Fine Center and hired Coopers & Lybrand to conduct a review of its project. The findings and recommendations of this review, which were released on May 27, are the focus of today's hearing.

The Coopers & Lybrand report confirms what I have been saying for the last 2 years, namely that the National Fine Center is not feasible and the needs of the districts in managing and collecting criminal debt cannot be met through the current approach to the national database.

Coopers & Lybrand recommends that any fiscally sound solution must start by creating a debt management system at the district level. The first step of this process is, according to Coopers & Lybrand, the rapid and orderly termination of the National Fine Center. There is broad agreement that the Fine Center must be discontinued, and I am pleased that all of the stakeholders in this effort have begun this process. On June 28, I, along with Senators McCain, Hatch and Biden, urged the Administrative Office of the United States Courts to immediately begin the termination process.

Second, Coopers & Lybrand suggests that Congress consider legislation that would simplify or reduce the scope of a national or regional debt management sys-

tem. Criminal debt management operates in a complex environment in which many different people need access to accurate and timely debt management information.

Let me explain this environment in more detail. The U.S. courts have 94 districts. In these districts, there are almost 4,000 probation and pre-trial service officers in 93 probation offices and 41 separate pre-trial services offices, and approximately 600 judges, all of whom have clerks and deputy clerks. There are more than 100 Financial Litigation Unit Assistant U.S. Attorneys and over 300 paralegals and Financial Litigation Unit agents. All of these people need access to criminal debt information, and the processes by which they access this data should be streamlined.

To reduce the amount of debt that will require long-term tracking, two particularly interesting options are to focus on getting criminals to pay special assessments at the time of sentencing or through wage garnishment. Special assessments make up 40 percent of the number of criminal debts but only 1/10 of one percent of the dollar value of the total debt. This means that, currently, an inordinate amount of time and money is spent tracking a large number of debts that comprises a very small amount of money. I believe that any common-sense approach to improving the current debt management environment should fully address this issue.

Coopers & Lybrand also advocates the creation of a full and independent debt management program in a single large pilot district and then evaluate the feasibility of copying this new system in other districts. Senator McCain and I are working to develop a proposal which will lay the groundwork to implement this recommendation, and I look forward to hearing the comments of the witnesses about our proposal.

Executing these recommendations will require cooperation from the Department of Justice, the courts, and crime victims and their representatives. This, perhaps, is the biggest challenge as we move forward, but I trust that all sides will remain committed to the ultimate goal of improving the federal criminal debt system as we move forward with this process.

We have spent far too much money and far too much time and showed far too little in the way of results so far. All of the stakeholders need to come together at this critical juncture to develop a system that will have a direct return to both crime victims and their families and to American taxpayers.

Senator MCCAIN. Senator Dorgan has recommended that we bring all witnesses up at the same time and that is certainly fine with me.

Senator DORGAN. We have four witnesses, Mr. Chairman.

Senator MCCAIN. We have William Stanley "Stan" Hawthorne; Clarence Lee, who is the Associate Director of Management and Operations of the Administrative Office of the U.S. Courts; Debra Cohn, from the Office of the Deputy Attorney General of the Department of Justice; and David Beatty, who is Executive Director of the National Victim Center.

We will begin with you, Mr. Hawthorne, with your statement. Before you do, I want to thank you for the excellent job that Coopers and Lybrand has done. I read the full report last night and, in my opinion, you gave a very thorough assessment and the recommendations, Senator Dorgan and I will take with the utmost seriousness. I thank you. Please proceed.

TESTIMONY OF WILLIAM STANLEY "STAN" HAWTHORNE, C.P.A., PARTNER, COOPERS AND LYBRAND L.L.P.

Mr. HAWTHORNE. Thank you. Gentlemen, first, let me express my appreciation for being invited here today. I am Stan Hawthorne, partner with Coopers and Lybrand Consulting in McLean, Virginia. I am accompanied here today by Morgan Kinghorn and Young Kim, who are sitting directly behind me, who were key players in this assessment of the National Fine Center.

I would like to provide you with a brief overview of our findings contained in the independent assessment of the mission, goals, plans, and progress to date for implementing the National Fine

Center. Coopers and Lybrand Consulting was competitively selected to complete the assessment with a contractual time limit of 90 days. That was done on February 27. We issued our report on May 27.

The contract's focus was designed to accomplish 3 primary objectives to ascertain the best way to manage the criminal debt, accounting, and reporting system. This involved, one, assessing the viability of the National Fine Center; two, forward looking recommendations in terms of addressing the future issues involved with the accounting and reporting in criminal debt; and three, recommending alternative approaches to criminal debt data management, where appropriate.

Our approach involved a series of key elements that were designed to provide us with as much in-depth knowledge of the National Fine Center within the limited time frame as possible. First, we began by organizing a management advisory team comprised of key members from the Department of Justice, the Administrative Office of the United States Courts, victims groups, as well as Congressional staff.

Secondly, we identified the key stakeholders with respect to the National Fine Center, an important element from the standpoint of being able to define what their expectations were relative to the Fine Center. Through interviews and group discussions with stakeholders, we developed a consensus on the barriers to a successful conclusion to the Fine Center as well as how one would define success for the National Fine Center.

We gathered and reviewed historical information, a great deal of historical information, including U.S. Courts documents, Department of Justice information, NFC training materials, previous Congressional hearing records, GAO reports, legal documentation, statutes, and statistical data from the Department of Justice, the U.S. Courts, and the U.S. Sentencing Commission. Through interviews and focus groups, we defined and documented the "as is" business processes as they were currently working at the NFC, together with the planned business processes, in addition to the "to be", what we saw as the ultimate business processes.

We conducted extensive field reviews after development of those processes to determine the accuracy thereof. In the process, we interviewed over 250 people throughout the United States, as well as having conducted a mailing survey of an additional 1,000 people from the Department of Justice and the judicial system.

The team, including representatives from the Department of Justice and the Administrative Office, visited 8 districts in total, where we held both one-on-one interviews as well as interagency focus groups. The districts we visited included 3 that were on the Fine Center, Indianapolis, Madison, and Shreveport, and 5 that were not on the National Fine Center. Three of the sites we visited were the largest 3 dollar volume sites of the 94 districts and another of the sites was the largest case site as far as caseloads. It actually ranks fifth in terms of dollars. We believe that these were representative of the operating environments in the Courts and the Department of Justice.

We also performed limited benchmarking with private and public sector organizations, including the National Center for State

Courts, the Vera Institute of Justice, the Social Security Administration, the National Association of Franchise Management, the American Health Management Association, and several State courts, local courts, foreign governments, and private firms.

Our analysis led us to the following key findings and recommendations. First, the National Fine Center's operations should be terminated as efficiently and quickly as possible.

The management of criminal debt data needs to be built from a district level. The key reasons are, one, there are tremendously diverse and decentralized operating environments in both the Courts and the Department of Justice. Secondly, day-to-day transactions are actually at the district level, not on a national level. And three, the debt by its very nature is complex and has tremendous variation in amount, timing in terms of payment, physical location of the debtor and victim, as well as sundry other considerations.

Third, we have also presented legislative alternatives that hold up the possibility of reducing tracking efforts. For example, a large portion of the debt transactions are special assessment. Roughly 40 percent of the volume of transactions are in special assessments, which represent less than one-tenth of one percent of the dollar volume outstanding. Although these special assessments average only approximately $50 per debtor, they require the same level of effort as does tracking a $2 million restitution debt.

These facts suggest that additional incentives be developed to ensure more special assessments are paid at the time of sentencing, thus reducing the volume of transactions to be tracked thereafter. Conversely, while restitution is nearly 75 percent of the dollars owed, it represents only 22 percent of the volume of transactions. The possibility of lessening the need for the Government to track this debt is presented by way of passing the collection of these restitution amounts to those parties ultimately benefitting from the collection thereof. This could possibly be done by creating a consortium of national victims groups to act as agent on behalf of the actual victim.

While the Coopers and Lybrand team concluded that the National Fine Center cannot operate in an economically viable manner given the complex culture and environment within which it must function, we believe, as does the Administrative Office of the U.S. Courts and the Department of Justice, that quick action is necessary to take the next steps. In our view, that is first to transition the operations of the NFC back to the districts; second, to quickly develop detailed systems and operation requirements; third, to test the concepts of operations contained in our assessment at a single large complex district; and finally, begin full implementation in the largest judicial districts of the recommended approach, that is, a district-based accounting and reporting system.

In conclusion, I would like to add that we have had extensive cooperation from all parties involved in these issues, which was greatly appreciated. The leadership shown by Phil McKinney, Chief Accounting Officer of the Administrative Office of the U.S. Courts, and Lynne Solien, the Financial Litigation Unit Associate Director at the Department of Justice, was exceptional.

At this point, I would be glad to respond to any questions.

[The prepared statement of Mr. Hawthorne follows:]

PREPARED STATEMENT OF WILLIAM STANLEY HAWTHORNE

Mr. Chairman and Members of the Committee:

I am Stan Hawthorne, Partner with Coopers & Lybrand Consulting in McLean, Virginia. With me are C. Morgan Kinghorn, Director and Young Kim, Managing Associate with Coopers & Lybrand, two members of our team that provided an assessment of the National Fine Center. I would like to provide you with a brief overview of our findings contained in the Independent Assessment of the Mission, Goals, Plans, and Progress to Date for Implementing the National Fine Center. Coopers and Lybrand Consulting was competitively selected to complete the assessment with a contractual time limit of 90 days.

Background

We began the Independent Assessment on February 27, 1996 and issued the Report on May 27th. The contract's focus was designed to accomplish three key objectives to ascertain the best way to manage criminal debt accounting and reporting. This involved:

1. Assessing the viability of the National Fine Center;
2. Forward looking recommendations in terms of addressing the future issues involved with the accounting and reporting on criminal debt; and
3. Recommending alternative approaches to criminal debt data management where appropriate.

How We Went About the Independent Assessment

Our approach involved a series of key elements that were designed to provide C&L with as much in-depth understanding as possible within the 90 day timeframe of the operations of the National Fine Center and related organizations. The key elements of our assessment included:

1. The formation of a Management Advisory Team comprised of members of the Department of Justice, AOUSC, certain victims groups and Congressional staff.
2. An identification of key stakeholders involved in the accounting and reporting of criminal debt. This was an essential element in order to understand how the key stakeholders viewed the role and responsibilities of the NFC.
3. We worked through interviews and group discussions with stakeholders to develop a consensus on the barriers to full implementation of the NFC as well as how success would be defined.
4. We gathered and reviewed historical information including U.S. Courts documents, Department of Justice information, NFC training materials, previous Congressional hearings records, GAO Reports, legal documentation, statutes, and statistical data from the Department of Justice, the U.S. Courts, and the U.S. Sentencing Commission.
5. Through interviews and focus groups, we defined and documented the "As-Is" business processes as well as defined the "To-Be" business processes that should be the model for accounting and reporting on criminal debt.
6. We conducted extensive field reviews where we tested these business process maps.
7. We interviewed over 250 people throughout the country.
8. The team, including representatives form the Department of Justice and the AOUSC visited eight districts where we held one-on-one interviews as well as inter-agency focus groups. The districts we visited included three that were on the NFC (Madison, Indianapolis, and Shreveport); five not on the NFC. Three of the sites we visited were the three biggest dollar sites in the nation; and one had the largest caseload. We believe they were representative of the operating environments in the U.S. Courts and Department of Justice.
9. We surveyed nearly 1,000 people in the U.S. Courts and the Department of Justice to broaden our understanding of the issues in the districts.
10. We undertook benchmarking with private and public sector organizations including the National Center for State Courts, the Vera Institute of Justice, the Social Security Administration, the National Association of Franchise Management, the American Health Management Association and several state courts, local courts, foreign governments, and private firms.

Findings and Recommendations

Our analysis led us to the following key findings and recommendations:

1. The National Fine Center's operation should be terminated as quickly as possible.
2. The management of criminal debt data needs to be built from the district level. The key reasons are (1) there are tremendously diverse and decentralized operating environments in both the U.S. Courts as well as the Department of Justice; (2) day to day transactions are at the district as opposed to the national level; (3) this debt is complex due to tremendous variation in amount, the timing and terms of payment, the physical location of the debtor and victim, as well as sundry other considerations.
3. Legislative alternatives are presented in the report that hold out the possibility of reducing tracking efforts. For example a large proportion of debt transactions are special assessments (40%) but they represent less than 1/10th of one percent of the dollar value. Although these special assessments average approximately $50 per debtor they require the same level of effort as does tracking a $2 million restitution debt. These facts suggest that additional incentives be developed to ensure more special assessments are paid at the time of sentencing thus reducing the volume of transactions to be tracked thereafter. Conversely, while restitution is nearly 75% of the dollars owed it represents only 22% of the volume. The possibility of lessening the need for the government to track this debt is presented by way of passing the collection of these restitution amounts to those parties ultimately benefiting form the collection thereof. This could be done by creating a consortium of national victims of crime groups to manage the debt.

Conclusions

While the Coopers & Lybrand team concluded that the National Fine Center cannot operate in an economically viable manner given the complex culture and environment within which it must function, we believe as do the Administrative Office of the U.S. Courts and the Department of Justice that quick action is necessary to take the next steps. In our view, that is first to transition the operations of the NFC back to the districts; second, to quickly develop the detailed system and operation requirements; third, to test the concepts of operations contained in our assessment at a single large district; and finally begin full implementation in the largest judicial districts of the recommended approach: a district based accounting and reporting system.

In conclusion, I would like to add that we have had extensive cooperation from all parties involved in these issues surrounding the NFC. The leadership shown by Phil McKinney, Chief Accounting Officer of the Administrative Offices of the U.S. Courts, and Lynne Solien, Financial Litigation Unit Associate Director at the Department of Justice, was exceptional.

At this point I would be glad to respond to any questions from members of the Committee.

Thank you Mr. Chairman.

Senator MCCAIN. Thank you very much.

Welcome, Ms. Cohn.

TESTIMONY OF DEBRA COHN, OFFICE OF THE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Ms. COHN. Thank you, Senator. Mr. Chairman, Senator McCain, members of the Committee, I am Debra Cohn, Special Counsel to the Deputy Attorney General at the Department of Justice. Since November of 1995, I have overseen the Department's activities with respect to the Administrative Office of the U.S. Courts National Fine Center. I appreciate the opportunity to provide the Department's views on Coopers and Lybrand's report on the Fine Center.

With me today, behind me, are Kathleen Haggerty, Director of Debt Collection Management, and Lynne Solien, Associate Director of the Executive Office for U.S. Attorneys' Financial Litigation Staff. As you have heard, Ms. Solien has been the principal day-to-day contact person for the Department on the Fine Center during the Coopers and Lybrand evaluation.

As a preliminary matter, I would like to extend the Department of Justice's appreciation to Coopers and Lybrand for their thorough study of the Fine Center and their incisive observations. In addition, we appreciate the courtesies extended to us by the Administrative Office of the U.S. Courts, ensuring that we were full participants in this study.

I believe the Committee has a copy of my written testimony. This afternoon, I will highlight only the major points.

Senator MCCAIN. Thank you. Your complete statement will be made part of the record.

Ms. COHN. Thank you, Senator.

Since the inception of the National Fine Center, during the recent Coopers and Lybrand evaluation, and at today's hearing, the Department of Justice's goal has remained the same: The development by the Judiciary of an automated debt processing and tracking system so that the Department of Justice can refocus on our traditional responsibility, namely, the enforcement of defaulted criminal judgments.

The Judiciary has its own debt collection responsibilities. Judges enter orders and set payment schedules. The clerk of the court receives payments of fines, assessments, and restitution and the Probation Office monitors payments. Once a debtor fails to pay a criminal fine, assessment, or restitution, then it is the Department's role to request a court to issue a garnishment order or some other post-judgment remedy.

To meet this responsibility, a U.S. Attorney's Office must have quick access to accurate information on the amount of the debt, evidence the debtor is in default, and the debtor's location. Unfortunately, in the past, too many Department of Justice resources have been diverted from enforcement to processing and tracking.

With the enactment of the Criminal Fines Improvement Act of 1987, Congress delegated the responsibility for receipt of all criminal fine, assessment, and restitution payments to the judicial branch and mandated that the Administrative Office of the U.S. Courts establish a National Fine Center to develop an automated and centralized debt and payment tracking system. We welcomed this effort at the Department of Justice, which we hoped would allow the Department to focus on enforcement of defaulted judgments, to better promote criminal justice goals of punishment, deterrence, and to better serve victims.

One year ago, Gerald Stern, then the Department of Justice's Special Counsel for Financial Institution Fraud, urged the Committee to halt further implementation of the Fine Center until an automated on-line criminal debt management system could be tested. The Coopers and Lybrand report has confirmed the Department's concerns about the effectiveness of the Fine Center and has recommended that the Fine Center be closed as quickly as possible. As you have heard, we concur.

Closure of the Fine Center presents complex transition issues to be addressed by the Judiciary and the Department of Justice. The Department already has taken several steps to this end, which are detailed in my written statement. We are committed to helping the AOUSC accomplish their task as effectively as possible.

26-048 O - 96 - 2

At the same time as we take steps to close the National Fine Center, we also must address the future. Coopers and Lybrand has recommended that a large, well-automated district be selected to test the concept of a district-wide data base. We agree this concept merits testing. To clarify a point in my written statement, the Department believes that an automated district-level debt management system will provide a foundation for a national debt collection system and we are ready to assist the AOUSC in implementing Coopers and Lybrand's report.

To this end, we recommend the following steps be taken expeditiously. First, operation of the pilot project can be modeled on the successful procedures developed during the recent evaluation. A management advisory team should consist of representatives from the Department of Justice, the Administrative Office, and the victims organizations, with an executive committee or oversight board.

Second, we are ready to meet to select an appropriate pilot district. We want to ensure that the U.S. Attorney there is committed to this endeavor, as well.

Third, the Administrative Office should continue to serve in the limited role of lead agency to address procurement and funding issues.

Finally, the Administrative Office as lead agency must complete a systems requirement analysis and cost estimate for the pilot.

While we urge swift action to implement the pilot project, we have two concerns which merit Congressional attention at this time. First, while each district may be unique, the respective debt collection responsibilities of each agency should be set nationally to reflect their statutory and functional roles. The Coopers and Lybrand report outlines 4 debt management functions: Account setup, billing and processing, tracking and monitoring, disbursement and administration.

As both Congress and Coopers and Lybrand have recognized, many of these duties naturally fall to the judiciary community. For example, Congress has already identified the clerk of the court as the appropriate office to receive payment for fines, restitution, and special assessments. Similarly, Coopers and Lybrand indicates that account setup should be done by either the clerk of the court or the U.S. Probation Office. We concur.

Nationally set responsibilities promote accountability. Given the existing organizational structure, no clerk, probation officer, or financial litigation agent can compel performance from someone in another organization. Moreover, without nationally-set responsibilities, a new chief judge, U.S. Attorney, chief probation officer, or clerk of court can simply decide that while his or her office performed a certain function in the past, they are not going to do so in the future. Nationally recognized responsibility is critical to efficient debt collection management.

Second, Coopers and Lybrand's report has significant funding implications. Absent Congressional directive, the Department has an annual statutory obligation to transfer funds to the Administrative Office, for the Fine Center, from the Crime Victim Fund. In addition to costs associated with transition, there may be considerable

expenses in pursuing the pilot district level debt management, including personnel, communications, and technology costs.

Finally, the Department had anticipated that the Fine Center would substitute for a Department criminal debt information system after 1997. To perform the processing and tracking duties in the interim, and to participate in a pilot system, the Department will need to replace the outdated, unreliable equipment and develop an automated tracking system during fiscal year 1997 and thereafter. This can be done, but at considerable expense. We hope to address this issue with you in the future.

Development of district-level debt collection management will relieve the Department of Justice of its processing and tracking responsibilities and allow us to focus our attention where it belongs, on enforcing defaulted debt.

Before concluding, I would like to mention a few additional measures Congress can take to improve criminal debt collection. We recommend that Congress relieve the U.S. Attorneys of the obligation to calculate interest and penalties, to make the new criminal debt enforcement remedies in 18 U.S.C. Section 3613 retroactive, and to clarify the victim's right to enforce a restitution order.

In addition, the Department has proposed legislation, the Federal Debt Collection Procedures Improvement Act, which contains many provisions that would enhance our ability to collect criminal debts. I will just mention a few here, such as better access to information about the debtor's ability to pay, more time to undo collusive transfers of property, and authority to prevent the debtor from dissipating assets.

The Department of Justice appreciates all the work of this Committee to improve debt collection, and I am available to answer any of your questions.

[The prepared statement of Ms. Cohn follows:]

PREPARED STATEMENT OF DEBRA COHN

Mr. Chairman, Senator McCain, Members of the Committee, I am Debra Cohn, Special Counsel to the Deputy Attorney General at the Department of Justice. Since November 1995, I have overseen the Department's debt collection activities with respect to the Department's contact with the Administrative Office of United States Courts' (AO) National Fine Center (NFC). We appreciate the opportunity to provide the Committee with the Department's views on the report and recommendations made by Coopers & Lybrand (C&L) on the NFC.[1] With me today are Kathleen Haggerty, Director of Debt Collection Management, and Lynne Solien, Associate Director of the Executive Office for United States Attorneys' Financial Litigation Staff. Ms. Solien has been the principal Department of Justice day-to-day contact person for the AO on the NFC during the C&L evaluation.

The Department of Justice has long been responsible for the enforcement of criminal judgments while the Judiciary—particularly the Clerk of the Court offices—have been responsible for processing payments by criminal debtors. When a debtor is in default and has not paid a criminal fine, assessment or restitution, it is up to the Department of Justice to enforce collection. To meet this responsibility a United States Attorney's office (USAO) must have quick access to accurate information on the amount of the debt, evidence the debtor is in default, and the debtor's location. Only with this information can the United States Attorney request the Court to issue a garnishment order or another post judgment remedy.

With the enactment of the Criminal Fines Improvement Act of 1987, Congress delegated the responsibility for receipt of all criminal fine, assessment and restitution payments to the Judicial branch and mandated that the Administrative Office

[1] Independent Assessment of the Mission, Goals, Plans, & Progress to Date for Implementing the National Fine Center, Coopers & Lybrand, May 27, 1996.

of the Courts establish a National Fine Center to develop an automated and centralized debt and payment tracking system. The NFC thus was intended to relieve the Department of Justice of processing and tracking activities so that it could concentrate on enforcement. The Department welcomed the NFC in anticipation that it would provide accurate and current information and relieve the Department of processing and tracking activities so that we could concentrate on enforcement.

COOPERS & LYBRAND'S FINDINGS

C&L's report recognizes that criminal debt is unique in several ways which complicates its collection. For example, it notes that the imposition of special assessments results in an inordinate amount of effort to track and collect a large number of debts of very small amount. In recognition of this problem, the Department of Justice has encouraged its prosecutors to collect special assessments at or before sentencing to minimize the level of effort required. C&L also notes that criminal debt can be more difficult to collect—not only because it is involuntary debt, but because the imposition of the debt is not necessarily related to the defendant's ability to pay. Recently, the USAOs have reviewed their criminal debt inventory and determined that reasonable efforts to collect are likely to be ineffective or minimally effective for 68 percent of that inventory due to the debtors' inability to pay, being unlocatable, deported or in bankruptcy. Indeed, the USAOs have determined that 77 percent of pending restitution orders and 22 percent of outstanding fines are not fully collectible. The Department needs to focus on criminal debts that can be collected. We hoped that the NFC would allow us to do this by removing the responsibility for processing and tracking out of the USAOs.

Despite the Department's hopes for a successful NFC, 1 year ago, Gerald Stern, then the Department of Justice's Special Counsel for Financial Institution Fraud, testified before this Committee and requested that the Committee halt further implementation of the NFC until an automated, on-line criminal debt management system could be tested and accepted. Without such a system, the Department feared the NFC would not be able to provide current and accurate information. The C&L report has confirmed the Department's concerns about the effectiveness of the NFC and the wisdom of expanding it beyond the first 42 districts.

C&L's recommends that the NFC should be closed as quickly as possible. We concur. This does not in any way diminish our commitment to the development of an efficient system to record, track and report on federal criminal debt. Relieving the USAOs from the burden of cashier functions and the duplication of effort it creates is critical to allowing the Department to devote our limited resources to our primary debt collection responsibility—enforcing collection of criminal debts when debtors default. The Department is committed to aggressively pursuing criminal debtors who have failed to pay the fines and restitution they owe.

Closing the NFC and Associated Transition Issues

As the C&L report acknowledges, closure of the NFC presents complex transition issues that must be addressed by both the Judiciary and the Department of Justice. Our organizations already have begun working together to resolve these issues. Let me briefly outline some steps the Department has taken on these issues:

- Assembled a Department of Justice transition team with members from the Executive Office for United States Attorneys, the Office of Debt Collection Management and the Bureau of Prisons that communicates regularly with NFC and other personnel at the Administrative Office of United States Courts on transition issues.
- Notified all affected USAOs of the results of C&L's assessment of the NFC, and provided instructions to open records for all NFC debts on their local automated systems and advised the USAOs that no new accounts would be opened at the NFC after July 19.
- Communicated the Department's information needs (such as complete accounting histories for each debtor) to the NFC team.
- Developed a plan to resume sending billing statements to debtors when the NFC closes, with the initial debtor statement to include a flyer giving the debtor information on the new payment procedures.
- Obtained listings from the NFC of payments that it cannot match to a debtor account. The USAOs have already begun identifying the correct "orphan" accounts for application and disbursement of these payments.

A thorough and efficient closure of the NFC requires a strong effort on the part of the AO. The Department is committed to full cooperation in this effort. We have identified three critical transition issues to accomplish this goal.

First, recent legislation has raised new issues in the transition process that, if left unaddressed, the Department believes will substantially hinder the transition back to a local system in the 42 NFC districts. Public Law 104–132, the "Antiterrorism and Effective Death Penalty Act of 1996", amended 18 U.S.C. §3611, to require the clerks of the court to receipt restitution in addition to fines, special assessments, interest and penalties. Unfortunately, the legislation was not made retroactive. Consequently, the return of restitution data will be complicated by whether the restitution order was entered by the court before or after April 24, 1996. The criminal debt management process is disrupted unnecessarily when different rules apply to debts imposed on different dates. To correct this, we hope that Congress will consider making the amendment to 18 U.S.C. §3611 retroactive.

Second, while section 3611 requires the clerks of the courts to receipt payments for criminal debts, including interest and penalties, it does not expressly require them to calculate interest and penalties. While seemingly a minor point, unless the clerks' offices assume this responsibility, the USAOs in the NFC districts will need to continue the time consuming and inefficient task of maintaining duplicative accounting records to ensure that interest and penalties are calculated. We ask Congress to consider this practical difficulty in any amendment to 18 U.S.C. §3611.

Finally, while the NFC team has provided the Department with a draft transition plan in the form of a time line that appears to address the Department's concerns, it is based on current resource levels at the NFC. It is our sincere hope that the AO is committed to making sufficient funding and personnel available for a smooth transition to local criminal debt data management with minimal disruption. The Department has offered to provide temporary personnel to assist the NFC team with reconciliation of accounts and the application of unidentified payments. However, the NFC must have the necessary core personnel to complete the closure process successfully.

A smooth transition to a local criminal debt data management system is feasible and some preliminary progress has been made toward accomplishing this. As we pursue this objective with the AO and begin to look at future criminal debt management initiatives, it is hoped that we can build on the cooperation and good working relationships that were developed during the NFC assessment process.

Decentralizing Criminal Debt Data Management

C&L has recommended that a large, well-automated district be selected to test the concept of a district-wide database, and we agree this concept merits testing. As C&L notes, a national, centralized approach to criminal debt data management will never meet the needs of the users for on-line access to accurate payment and account information concerning criminal debts. However, some questions remain that will affect the ability of the Judiciary and the Department to implement C&L's recommendations for development of local automation of the criminal debt management functions.

1. Standardized Core Functions

While the C&L report contemplates the pilot district level database producing a National Rule Book, the Department believes that certain core functions should be standardized. Congress already placed responsibility for many of these functions with the Judiciary and the pilot should be implemented in accord with these prescribed obligations.

The C&L report outlines five "core" debt management functions: account set-up, billing and processing, tracking and monitoring, disbursement, and administration. While implementation of a criminal debt data management system cannot, and should not, change the underlying operational principles of independence and decentralization at the district level, it is important to set national standards for which agency should perform core functions that correspond with existing statutory functions. Indeed, Congress has already identified the clerk of the court as the appropriate office to receipt payments for fines, restitution, special assessments, interest and penalties. Additionally, C&L indicates that account set-up should be done by either the Clerk of the Court or the U.S. Probation Office and that all offices within a district will need to input tracking and monitoring information into the database. We concur. If general roles and responsibilities are not set nationally there is a risk that they may never be fully institutionalized in a district. A new Chief Judge, United States Attorney, Chief Probation Officer or Clerk of the Court can simply decide that, while that office may have been performing a certain function, it will not do so in the future. In addition, there are likely to be gaps in accountability because no clerk, probation officer or financial litigation agent can compel appropriate performance from someone in another organization.

2. The Proposed Pilot

1 would like to offer a few comments on the operation of the pilot. The Department supports a Management Advisory Team similar to that formed during the independent assessment (consisting of representatives from DOJ, AOUSC, and the victims' organizations). Additionally, C&L suggests a smaller executive committee consisting of a representative from DOJ, AOUSC and the victims organizations to ensure we meet project goals and objectives. It is expected that this three person committee would provide the day-to-day oversight needed for the pilot and that the larger Management Advisory Team would be involved in the more significant issues presented in implementing the pilot database.

While the implementation of a pilot district database certainly can be guided by the Management Advisory Team and an executive committee, it also will involve immediate procurement and funding issues. Accordingly, the Department suggests that the AO serve in the limited role of lead agency to coordinate the pilot recommended by C&L and the implementation of any further district-based solution. The AO has not only demonstrated its capability to perform these tasks by its successful management of the independent assessment, it is also the agency that ultimately is responsible for most of the core responsibilities involved in criminal debt data management.

Implementation of the pilot proposed by C&L requires that we move quickly now to accomplish the following steps: The members of the Management Advisory Team must reach an early agreement on a district that meets C&L's criteria to serve as the pilot district, and the lead agency must take steps to complete a systems requirements analysis and cost estimate for the pilot. At that point, the Department, the AO and Congress can revisit the issue. We hope that the Congress will support moving forward on these recommendations by C&L.

3. Funding

C&L's recommendation that a district level criminal debt data management approach be pursued in lieu of the NFC raises several funding issues. The Department's most urgent funding issue is our concern with the on-going statutory obligation to fund the NFC from receipts of the Crime Victims Fund each year. We hope that the Congress will address future funding from this source prior to closure of the NFC. Without congressional action, the Department must transfer $3 million to the AO on October 1, 1996 for the NFC. We would be happy to work with the Congress on an appropriate legislative solution.

Independent of the costs of closing the NFC, there are considerable expenses involved in pursuing a pilot district based approach, including consulting services, personnel, equipment, communications and security costs and information technology costs. While the report is silent as to the funding for these important tasks, the Department hopes that Congress will consider these issues in greater detail.

In addition, the Department had assumed that the NFC would eliminate the need for it to have a criminal debt tracking system after 1997. With the elimination of the NFC concept of a centralized database, the Department will need to develop and implement an automated tracking system during fiscal year 1997 and the first half of fiscal year 1998, both to participate in any pilot of a district-wide system and to replace existing equipment that is outdated and unreliable. This can be done, but at considerable expense.

4. Legislation

There are several amendments to the law that the Department believes would improve criminal debt data management processes, allow the USAOs to concentrate their resources on the statutory responsibility of enforcement, and increase the likelihood of the success of a district database pilot. We have already suggested that retroactive application of the requirement that the clerks of court accept restitution payments would eliminate unnecessary complications for managing these debts. Other amendments could relieve the USAOs of the obligation to calculating interest and penalties, make the new criminal debt enforcement remedies in 18 U.S.C. § 3613 retroactive, and clarify the victim's right to enforce a restitution order. Most of these changes could be pursued as technical amendments to the "Antiterrorism and Effective Death Penalty Act of 1996".

The Department has also proposed legislation, the Federal Debt Collection Procedures Improvements Act, to enhance the criminal and civil debt collection enforcement process. This legislative proposal contains many provisions that would enhance our ability to collect criminal debts, such as better access to information about the debtor's ability to pay, more time to undue collusive transfers of property, authority to prevent the debtor from dissipating assets and similar provisions that reflect the collective experience of the USAOs on enforcement needs in this area. We

look forward to working with the Congress on early enactment of this legislation as part of our mutual effort to improve criminal debt collection.

Thank you for the opportunity to present the Department's views on the National Fine Center. I will be happy to answer any questions you might have.

Senator MCCAIN. Thank you very much, Ms. Cohn. Thank you for all of your efforts on this and your staff on this very important project.

Mr. Lee, welcome.

TESTIMONY OF CLARENCE A. LEE, JR., ASSOCIATE DIRECTOR FOR MANAGEMENT AND OPERATIONS, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Mr. LEE. Thank you, Mr. Chairman, Senator Dorgan. I appreciate the opportunity to appear before you today and discuss this extraordinarily important issue.

My name is Clarence A. Lee, Jr. I am the Associate Director for Management and Operations in the Administrative Office of the U.S. Courts, and I am appearing on behalf of the Administrative Office.

During the last several years, we have all witnessed and some of us have participated in 3 successive failures. While I believe that all the parties involved with legislating and implementing the concept have acted in good faith, the Coopers and Lybrand report simply says we have been trying to raise flowers in a rock garden.

The net effect of our 3 efforts and 3 timeouts and 2 restarts is that we are essentially at ground zero, although a great deal of education has occurred. Some things are just very difficult to do. I think that the Committee's leadership in drawing us to a halt last year was very helpful. In fact, we would probably be still roaring along, trying to do something that we thought was possible at the time, with a great deal of enthusiasm but which turns out not to have been possible.

The third successive restart, I think, should be taken with great care and caution and I think that Senator McCain's suggestion that a cost-benefit analysis be submitted before we proceed to implementation is very important.

Following Coopers' recommendation to close the Fine Center, which we endorse fully, all affected parties must work closely together, and we have been working closely with Justice and the Courts and the victims associations in this regard. I believe we can continue to work very closely together.

I think that the cooperation that was exhibited by the Department of Justice and Coopers and Lybrand and the victims and members of your own staff, John Raidt and Rebecca Donovan, was exceptional, and it is one of the reasons that we were able to come to closure and reach agreement and work through some very complex, sensitive issues. Stan Hawthorne and Morgan Kinghorn were particularly exemplary in their ability to tell the truth in very difficult circumstances and convinced us all of what the truth was.

With the concurrence of members of the Committee, the Department of Justice, and the senior officials of various crime organizations, Director Mecham, with the agreement of this Committee, called the timeout in the fall of 1995 on the continuing implementation and expansion of operations of the National Fine Center in

order to arrange for this independent review. In May of this year, Coopers and Lybrand concluded their review and assessment, reporting that a national approach to fine collection is not feasible, economical, nor efficient.

In its report, Coopers stated that the needs of the district, those people directly managing and collecting debts, cannot be met through a national data base approach. Consequently, Coopers recommended the Fine Center be terminated in an orderly fashion. We fully endorse that recommendation. I believe that we are working to do that.

I have a short paper in response to the Senator's questions contained in a letter of, I believe, the 18th, June 18. It responds to the issues of how we will move through the closure of the NFC and work with the Courts and Department of Justice, which I will provide for the record, and then I can answer any questions on it that you might have.

[The prepared statement of Mr. Lee follows:]

PREPARED STATEMENT OF CLARENCE A. LEE, JR.

Thank you for the opportunity to appear before you today to discuss the current status of the National Fine Center. I am Clarence A. Lee, Jr., the Associate Director for Management & Operations of the Administrative Office of the U.S. Courts and I am appearing on behalf of the Administrative Office (AO).

During the last several years, I have witnessed, along with members of Congress, the Judiciary, the Department of Justice, and representatives of crime victims organizations, successive disappointments in the attempts to develop a national approach to criminal debt tracking and collection. While I believe that all parties involved with legislating and implementing the concept have acted in good faith, the Coopers & Lybrand report unfortunately finds that the concept was fatally flawed from the outset.

In following Coopers' recommendation to close the Fine Center, all affected parties involved must move forward, working together to ensure that criminal debt operations are properly transitioned to those districts that have been serviced by the Fine Center. The Administrative Office pledges its full cooperation in achieving this goal.

In addition, I would like to express the Judiciary's appreciation to the members of this committee and other Senators for their guidance and leadership in addressing the difficult issues that have plagued the Fine Center. I also want to thank the following individuals for their cooperation and diligence regarding the Coopers & Lybrand study: John Raidt and Rebecca Donovan on the legislative staff; Debra Cohn, Carolyn Hightower, and Lynne Solien from the Department of Justice; David Beatty and John Stein representing the crime victims; and Stan Hawthorne and Morgan Kinghorn of Coopers & Lybrand.

With the concurrence of members of this committee, the Department of Justice, and senior officials of various crime victims' organizations, AO Director Mecham called a "time-out" in the fall of 1995 on the continuing implementation and expansion of the operations of the National Fine Center in order to arrange for an independent, third-party review and evaluation of the Fine Center. In May of this year, Coopers & Lybrand completed that review and assessment, reporting that a national approach to fine collection is not feasible, economical, or efficient. In its report, Coopers stated that "the needs of the districts—those people directly managing and collecting the debts—cannot be met through a national database approach." Consequently, Coopers recommended that the Fine Center be terminated in an orderly fashion as quickly as possible.

The Coopers & Lybrand study cited many reasons why a national approach will not work. The report recognized complex issues affecting the viability of a national approach, such as the environment and culture of independence and decentralization that exist, both in the Judiciary and the Department of Justice. Coopers concluded that the implementation of a national fine center will not, cannot, and should not try to change the underlying operational principles of the various entities. The study clearly showed that the knowledge, ability, and authority to effectively account for and collect criminal debt can best occur at the district level.

For more than a decade, the Judicial Conference of the United States, the Judiciary's national policy body, has consistently held the position that the responsibility of collecting criminal debt is an Executive Branch function. The AO has nevertheless tried to satisfy its legislative mandate to create the Fine Center, which was intended to provide administrative support to help the Department of Justice improve criminal debt collection. The Federal Judiciary continues to hold the position that this important administrative function cannot operate effectively when separated from the Executive Branch's criminal debt collection operations.

Currently, the criminal debt collection process is impeded by certain statutory provisions that necessitate continual cross-branch interaction at the most minute transactional levels. We would welcome the opportunity to work with Congress and other stakeholders to remove these obstacles.

Earlier this month, again with the concurrence of members of this committee and the Department of Justice, the AO initiated the process of closing down the National Fine Center. Coopers & Lybrand will be assisting us in the development and implementation of a comprehensive plan for closing the Fine Center and for transferring the accounting, receipting, and disbursing functions to the districts. Also, we are assembling a team of experts from the districts, made up of court clerk, probation, and pretrial services personnel, to work in concert with the AO, DOJ, and Coopers & Lybrand to establish efficient procedures and methodology for an effective transfer of operations.

Upon the completion of Coopers' study, the Fine Center staff were informed of the recommendation to close the Fine Center, thereby alerting them to the possibility of termination of their employment. We have notified the districts serviced by the Fine Center that no further criminal judgments will be accepted by it after July 19, 1996. This immediate action was necessary because the workload in the Fine Center continues to build as Fine Center staff begin to find other employment. These steps will help to avoid disruptions in debt collection activities.

In conclusion, we agree that a district level approach is the logical direction to follow in support of criminal debt collection enforcement. However, we also believe that there are various scenarios that could successfully implement this approach, which warrant thorough exploration. These scenarios include legislative changes that would place responsibility with those who are in the best position to achieve optimum control and accountability.

Given the Executive Branch's responsibility and authority to collect outstanding criminal fines, it is the Judiciary's position that Congress should place the accompanying debt tracking function within the Executive Branch. Coopers & Lybrand found that environmental, cultural, and organizational differences are, in large part, responsible for the difficulties previously encountered. We all recognize that we cannot afford to travel down this same road again. A new, although still bifurcated approach, treads dangerously close to the same territory that already has been unsuccessful in recent years. We, of course, stand ready to support and assist the direction chosen by Congress and look forward to working with this committee and interested parties toward achieving success in this important undertaking.

I would be pleased to answer any questions you might have.

Senator MCCAIN. Thank you very much, Mr. Lee.

Mr. Beatty, welcome back.

TESTIMONY OF DAVID BEATTY, EXECUTIVE DIRECTOR, NATIONAL VICTIM CENTER

Mr. BEATTY. Thank you, Mr. Chairman, members of the Committee. I appreciate the opportunity to appear before you again to talk about a topic that is obviously of grave concern to crime victims.

My name is David Beatty. I am the acting Executive Director of the National Victim Center. Just by way of background, the National Victim Center is a national nonprofit organization that works with more than 8,000 victim organizations and agencies across the country, many of which who are the direct beneficiaries of Federal fine collection and the VOCA money through the Victims of Crime Act.

It is for this reason that the victims have taken such an active interest in not only Federal fine collection but the Fine Center, as well, and it is also the reason that we have been so distressed to

see the failings of the Fine Center over the many years and now are quite distressed to see that it is quickly meeting an eminent demise.

Unfortunately, a lot of crime victims, I think, realize that it needs to be shut down, but they are also feeling revictimized by that reality, revictimized because they placed both their money and their trust in the hands of people who were responsible for this project, and as the report makes clear today, I think that trust was misplaced and $11 million of the money has disappeared forever into the black hole of the Federal bureaucracy. It has been admitted that honest mistakes were made, and I think that is probably true, but unfortunately, it is crime victims who are going to again be asked to pay for those mistakes.

It is hard to find anything positive that has come out of this project. Perhaps the one positive thing is that it could have been worse. As has already been said today, we could have easily spent all $25 million that has been allocated for this purpose, and I shudder to think where we would be today if this Committee had not stepped in and demanded an independent assessment. I just want to say that we are extremely grateful to both Senator McCain and Senator Dorgan for really intervening to prevent us from throwing good money after bad.

I think while the conclusion of the independent assessment to close the Center is a bitter pill that we must swallow, I think it is a pill and necessary medicine to keep us from continuing to see the hemorrhaging of vital victim funds.

I am not an expert in debt management or information systems, but I would like to just make a comment or two about the major recommendations that were made in the assessment. In terms of the termination, we have no reason to question the factual basis and conclusions upon which they determined that that should likely be closed. Clearly, it has not been delivering on the benefits that it had originally envisioned and none appear forthcoming, so we, indeed, concur with the recommendation to close the Center.

We also believe that even though we are very interested in conserving the resources that are left as part of that project, that we do, indeed, need to take into consideration the transfer of these functions in the districts where they have relied totally on the Fine Center to do this work for them, to transfer that back to the districts so that they can continue on with this important work. In other words, we should try to put those districts back in as good of position as they were before we came to try to help them.

We would also like to urge those who are responsible for, I think, the eminent shutdown to be asked to do everything in their power to liquidate what assets remain and conserve the resources of the project to the benefit of the Victims Fund.

Based on the report's cost-benefit analysis concerning expenses involved with collecting special assessments, we agree that every effort should be made to try to encourage immediate payment of these debts, including whatever necessary legislation might be needed to implement that proposition. We also, however, encourage policy makers to consider upping that standard assessment so that the economic feasibility of tracking and collecting that money may make more sense.

In terms of restitution collection by the victim consortium, we agree with the report's contention that victims as the ultimate beneficiaries of restitution are probably most highly motivated to properly track and collect this debt. However, I would point out that the same could be said of the collection of fines, as well. Nonetheless, while we are intrigued by this possibility, I do not think we have enough information at this juncture to really form an opinion as to whether that is advisable or not, but we would be interested in exploring that further in the future.

In terms of the demonstration project, I think that probably victims are understandably apprehensive about spending yet more money out of the Victims Fund for yet another information management project, particularly without more information concerning its feasibility. At the minimum, as has already been suggested by Senator McCain, we would like to very much see a cost-benefit analysis that would provide us with some assurance that the amount of investment that we are going to be making in terms of a future project is going to return more in additional collections.

I think, to be real honest, victim organizations at this point feel burned by their bad investment of $11 million and really are not inclined at this juncture to make another investment of this kind without a strong case being made for why it is in their best interest.

As a more general principle, I am not sure it is really fair to ask victims and the fund to pay for what is, in effect, the automation and integration of the Federal criminal justice system. It may be time to look elsewhere for the resources to accomplish that feat, and maybe it is time to take that money and return it to those who we know will do something positive with it, and that is the victims and victim service providers.

Just in closing, I believe that the report and the assessment that was done answered many important questions. What I think is truly tragic is that theses questions should have been asked and answered 6 years and $11 million ago. We can sit here and sort of listen to explanations as to why it happened, explanations of what we should do next, but the bottom line is the $11 million in the fund is gone, money that would have otherwise been there to help crime victims, and we have very little to show for it.

It really makes me heartsick to sit here before you today and think about what $11 million would have meant to the lives of crime victims in this country. We can maybe, I think, understand the explanations, but I am not sure the victims can. I am not sure who is going to explain it to them. Who is going to explain to the women who have been sitting on lists waiting to get into domestic violence shelters for years why it is that they cannot get the basic resources they need to end the kind of abuse and brutality that is a daily part of their lives.

Who is going to explain to the rape victim in Tennessee who was turned away from a rape crisis center because of technical difficulties with a computer management system 1,000 miles away that primarily prevents her from getting the counseling that she needs to put her shattered life back together? And I do not know who is going to explain to the drunk driving victim who is now paralyzed by his being denied his right to restitution simply because bureau-

crats in Washington could not or would not do their job, despite the fact they were handed the resources to do it?

I do not think explanations probably mean a lot to these people at this point. What they do know is their pain and what they do know is that the resources that were allocated to ease their suffering is nowhere in sight. So before we begin asking them to endure further without the necessary resources to recover, before we ask them to spend yet more money on another project with some uncertain future benefit, I think we need to come up with a better explanation as to why this money should be used for these purposes and why it will be in their best interests. Thank you.

[The prepared statement of Mr. Beatty follows:]

PREPARED STATEMENT OF DAVID BEATTY

I'd like to thank the chairman and members of this committee for the opportunity to once again appear before you to address the issue of the National Fine Center and federal criminal debt collection.

My name is David Beatty and I am the Acting Executive Director of the National Victim Center.

By way of background, the National Victim Center is a non-profit organization which works directly with more than 8,000 victim organizations and agencies many of whom benefit directly or indirectly from the federal debt collection efforts through the Victims of Crime Act (VOCA) Fund.

Indeed, no other federal legislation has had a greater impact on the lives of our nation's crime victims than the Victims of Crime Act, through the VOCA Fund. This money truly is the life blood of the victims' movement.

It is for this reason that the victims' movement has taken such an active interest in the collection of Federal fines and in the Fine Center particularly. It is also the reason that the obvious failure of the Fine Center and its imminent demise have left many victims feeling re-victimized.

Re-victimized because they placed their money and their trust in the hands of those responsible for the project. And the report today has made it clear that that trust was misplaced and $11 million dollars of the victims' money has disappeared forever into the black hole of the Federal bureaucracy.

It has been admitted that honest mistakes were made, but, unfortunately, once again, it is the victims who will be made to pay for those mistakes.

It's hard to find anything positive about this project, other than the fact that it could have been even worse. We could easily have seen all $25 million spent before we realized the project was doomed to fail. I shudder to think where we would be today, had this committee not stepped in to demand an independent assessment.

We are extremely grateful, particularly to Senator McCain and Senator Dorgan, for intervening to prevent good money from being thrown after bad.

While the conclusion of this independent assessment to write off the Fine Center, and $11 million, was hard for us to swallow, it was the bitter pill we needed to stop the hemorrhaging of vital victim funds.

I am not an expert in information systems or debt management, but I would like to make a few comments and offer a few views concerning the key recommendations of the final report.

Termination of the National Fine Center Project

With regard to termination of the National Fine Center Project—we are not in a position to question the facts or the recommendation of the report to close the Fine Center. Since we have derived none of the benefits originally envisioned for the project and none appear to be forthcoming, we concur with the recommendation to close the Center.

While we believe every effort should be made to conserve the resources that remain among the allocated funds, we concede the need to assist those districts which are wholly reliant on the Fine Center for accounting and tracking purposes to return those functions to the districts.

In other words, we agree that we should put those districts in as good a position as they would have been had we not come to "help" them.

We also urge that parties responsible for the shut down of the project be required to make every effort to liquidate and/or redirect the remaining assets of the project to the direct benefit of the victims' fund.

Immediate Collection of Special Assessments

Based on the report's cost benefit analysis concerning the expense involved with collecting special assessments we agree that every effort should be made to encourage immediate payment of these debts, including any necessary legislative measures this might entail. We would encourage policy-makers to consider increasing these assessments in a way that would help cover the cost of tracking and collecting unpaid assessments.

Restitution Collection by Victim Consortium

We agree with the report's contention that victims—who ultimately benefit from the collection of restitution—will be most highly motivated to properly track and collect the debt. I might point out, however, that the same could be said of fine collections. Nonetheless, while intrigued by the possibility, we simply do not have enough information about exactly what this would entail in a practical sense to form an opinion as to its visibility at this time. We would be interested in exploring this option further.

District Demonstration Project

The report recommends the development of a district-level data management demonstration project, to fulfill the goals and objectives of the Fine Center. We are understandably apprehensive about spending yet more money from the victims' fund on yet another information management project—particularly given the lack of information that is currently available concerning its feasibility.

At a minimum we would like to see a cost benefit analysis that would provide us with some assurance that victims would receive in increased collections more money than we put in to such a project. To be honest, victims' organizations feel burned by their last bad investment of $11 million dollars and aren't inclined to make another such investment unless someone can make a strong case to the contrary. I don't think that case has been made yet.

As a more general principle, I'm not sure it's appropriate to ask victims to pay for the automation and integration of the Federal criminal justice system. It may be time to look elsewhere for these resources.

It may be time to consider getting victims and the victims' fund out of the computer/information management business, and put that money were we know it will do some good, in the hands of victims and service providers.

In closing, I'd just like to say that we believe that this independent assessment answered many important questions.

What is truly tragic is that these questions should have been asked and answered 6 years and $11 million ago.

We can sit here and listen to explanations about why it happened and explanations about what we should do next, but the bottom line is that $11 million in funds that would have otherwise been used to help victims is gone forever, and we literally have nothing to show for it.

It makes me heart-sick to think of what that $11 million would have meant to crime victims in this country. Who's going to explain to the victims who were never helped and never will be helped where that money went?

Who is going to explain to the women on the waiting lists of virtually every domestic violence shelter in the nation why they couldn't get the help they needed to escape the brutality and abuse that is a daily part of their lives?

Who is going to explain to a rape victim in Tennessee who was turned away from a rape crisis center why technical difficulties with computer systems in Washington are the primary reason she can't get the help she needs to put her shattered life back together?

Who is going to explain to a drunk driving victim who has been permanently paralyzed why he was denied his right to restitution because bureaucrats in Washington couldn't or wouldn't do their jobs, even after they were handed the resources to do it?

To them, the explanations don't really matter. All they know is that they are in pain and the money intended to ease their suffering is gone.

So before victims are asked simply to continue to endure their pain in the future, before we ask them, yet again, to sacrifice their scarce resources for some uncertain future benefit, someone should be ready to explain why that is in their best interests. They deserve an explanation.

Senator McCain. Thank you very much, Mr. Beatty.

Mr. Hawthorne, you are going to have to help me out a little bit here. We have one of the biggest industries in America is the credit

card industry, where basically they collect debts. Would you agree with that assumption?

Mr. HAWTHORNE. Yes.

Senator MCCAIN. People go out and they run up bills and they owe things and American Express collects their debt. Sometimes they do not pay on time, so they employ other methods to get that money, but they do it with some efficiency. In fact, since most of these companies make a lot of profit, they do it with great efficiency. What is the difference between what they do and what we are trying to achieve here?

Mr. HAWTHORNE. First of all, I would say that it is really apples and oranges. It is unfair to compare the same type of debt that you have in the National Fine Center with that of American Express.

I and a couple of colleagues went out to lunch today and I just happened to pick up an application for how you get on the rolls for American Express, and it is really quite simple. It is a short form——

Senator MCCAIN. It is a lot harder to get off.

Mr. HAWTHORNE. —and actually, you can discard a lot of this that is just propaganda. Compare that, if you will, to the more typical judgment and commitment order, how you get on the rolls at the National Fine Center, which goes on for many pages of legalese and has some very, I think, tough language to interpret in it. I would just like to read this. This happens to be one. This is a one-pager. We did see one during the course of our review where actually it was hand-written and very difficult to read, at that.

Senator MCCAIN. That is the judgment?

Mr. HAWTHORNE. That is the judgment and commitment order. This one says, in part, "In addition, the defendant is assessed a fine of $5,000 on each of counts 1, 4," and something that I cannot read up there, "and a fine of $1,000 on each of counts 7 and 13, for a total fine of $22,000." That does not add to me, but maybe it does. "The defendant shall pay restitution to any institution or individual determined to suffer financial loss because of the acts of the defendant violating the laws alleged in counts 1, 4, 5, 6, 7, and 13. All other counts, except counts 1, 4, 5, 6, 7, and 13, are hereby dismissed in accordance with the jury verdict of January 30."

That is just one fairly simple example of what we are dealing with here and the difference. The way you just get on the rolls as a debtor—in one instance, it is entirely voluntary. A person making application to American Express, and I noticed on this form here there is only one line there for the name. Contrast that, if you will, to what we were told in the Southern District of California, where they need as many as 12 lines for the aliases that people have, that the convicted felons have. So the type of debtor that you are dealing with is entirely different.

The rationale and reason why they pay their bill is entirely different. The American Express card holder, if he wants to continue to use that credit card, is going to let American Express know where it is they reside. Contrast that again, if you will, to the felon that you have in the Fine Center, who is probably not overly cooperative in providing change of address.

You can go on and on. We have within the report and the backup data a whole summary of the differences between the type of debt

that you are dealing with there as opposed to the Fine Center. But American Express does not have a requirement of being a convicted felon to get one of their credit cards, and it is a far different scenario that you are dealing with.

Senator MCCAIN. Can you give me a number of the transition issues regarding the closure of the NFC and perhaps the most pressing one?

Mr. HAWTHORNE. I am sorry?

Senator MCCAIN. The issues of the transition that would be entailed in closing the NFC. What would you say are the most pressing issues?

Mr. HAWTHORNE. Obviously, high, I think, on priority is, I think as was pointed out in our report and as most people are aware, there is a sizeable amount, and I do not have the amount in front of me right now, that has been recorded in an orphan account. That orphan account is simply where monies—my understanding of it is—is where monies have come in and the National Fine Center personnel were unable to determine exactly where to credit that to. Obviously, that account has to get reconciled out and we have to get those monies credited to the proper debtor.

I think also that one of the most pressing issues is, obviously, with the close-down of an operation like this, the Administrative Office is certainly going to have a transition of personnel. They are going to be losing personnel. In fact, I believe I was told last week, that two of the lead players at the National Fine Center are actually leaving in the fairly near future.

Senator DORGAN. How many people now work in that center?

Mr. HAWTHORNE. I cannot answer that at this time. I am sure others here can, but——

Senator DORGAN. Roughly.

Mr. LEE. Before the time out, there were 27. There are presently 23. As of August 4, there will be 20.

Senator DORGAN. Thank you.

Mr. HAWTHORNE. That is a major issue. Obviously, the people are going to be leaving there and leaving there as quickly as they can find other employment. The thing that we have—and we have met at one time with the Administrative Office in the transition close-down of that, and I believe what I would suggest is to first define what the problem is. Based on our field review visits and trips to the various districts, I believe we are going to find some of those districts that are going to simply say, we have been keeping our own records anyway. We really do not need anything additional. Just close it down and we are not going to send you anything else.

Obviously, those are easy, and hopefully that is a high percentage. We do not know what that is right now. There are roughly, I think, 42 districts that are on the National Fine Center. But rather than trying to come up with a universal across-the-board way to deal with those, I think it should be done by talking to those individual districts and defining what their needs are specifically.

Senator MCCAIN. Ms. Cohn, Coopers and Lybrand's report suggests creating a model tracking and enforcement program within a single judicial district and expanding it from there. How long do you think it would take to develop such a plan, including a cost estimate and a cost-benefit analysis?

Mr. HAWTHORNE. Actually, there have been a couple of comments here today talking about there being a cost-benefit, and actually what we have suggested, I guess we have termed it a little differently in our report, but a requirements document which would, in essence, be a cost-benefit analysis of what it would take to bring the proof of concept pilot up within a specific district. I believe that that can be done within a 45-day time frame, to come back to the Committee and say, here is the time it would take, here is how much it is going to cost, and this is what it is going to do for you. I think that can be done in 45 days.

Senator MCCAIN. Ms. Cohn?

Ms. COHN. Would you like me to answer the same questions, Senator?

Senator MCCAIN. Yes.

Ms. COHN. Our understanding, obviously, from Coopers is that the pilot requirements document cost assessment would include, the sorts of things that you have mentioned, and we think is a necessary first step. We are anxious to move quickly to do that.

We think, as I said in my testimony, that it is appropriate for the AO to take the kind of administrative lead for that but to involve the same parties who were involved previously. We are hopeful we can do it in as quick a time as possible. Realistically, I am a little concerned that 45 days is particularly short. But we want to move expeditiously to build on the momentum that everyone at this table has, that we share a commitment to moving forward and to taking Coopers and Lybrand's recommendations and implementing them.

Senator MCCAIN. Should the Department of Justice or the AO take the lead in developing and implementing such a plan?

Ms. COHN. Our position is that—one of the things that Coopers and Lybrand's stresses is that implementation of the debt collection management system has to be done with the parties who are responsible, and that is why—the basis is our reading of their report for recommending a district-level system.

We believe that it is the Judiciary that has had the traditional responsibility for debt collection processing and tracking. From what Stan has read, the order, it is the judge who sets those terms. It is the clerk's office who Congress has authorized to receive payments, fines, assessment, restitution. It is the Probation Office that has the monitoring. We think it cannot be done without the AO being involved. We simply do not have authority at the Department over any of those participants.

At the same time—I am sorry.

Senator MCCAIN. My question is, who should take the lead?

Ms. COHN. We believe that the AO should take the lead, but we believe that it should be done in a manner similar to how they took the lead for the independent evaluation, which is they bore the administrative responsibilities for the procurement with Coopers and Lybrand and the day-to-day logistical steps, but they were vigorous about, and we appreciate, our full participation, as well as David Beatty and other representatives from the victims groups, and we believe that that is the appropriate way to proceed here, as well.

Senator MCCAIN. Mr. Lee, do you share Ms. Cohn's view, or do you have a different view?

Mr. LEE. I think that I share a portion of it, in that there is a partnership required. I think one of the difficulties is when you put people in a lead capacity that do not have the authority to lead or to make decisive decisions. In a partnership role, that is something that is shared and it is shared from the beginning.

If the Committee would wish to task these two entities to move forward, I think the closer it comes to a partnership, sharing versus tasking, one or the other, the greater the chance of success. Our official position, as you are aware, and the Conference's position is that is a DOJ responsibility, the collection function, not the receipting but the collection. That is something that has been at contention since 1984 and I am sure it will be at contention in 2004.

This problem can be resolved if we will work together, as we have on this piece of this project, the Coopers and Lybrand exercise. I do think that it deserves the sort of attention that the two agencies should bring to bear.

But I am concerned on this 45 day number, I would like to comment if I may. I think that we are going to be in the process of shipping back to 42 districts 20,000 accounts, all of which have some complexity, as we have become more and more aware. There are 4,000 orphan accounts, and it is a number that goes up and down. It is not the amount in the account that is necessarily as important as the large number and the fact that some U.S. Attorney might be moving to take action against a defendant because they have not paid when, in fact, they have. Grandmothers, mothers, daughters, sons, all sorts of relatives and 13 aliases could be involved in sorting out that one individual had paid $25 or $50 or $100, and those are the kind of amounts that are in these orphan accounts. They are not the $42 million payments. We do not manage to lose those.

Senator MCCAIN. I understand, but let me ask Mr. Hawthorne, do you not think one of the two agencies has to lead in developing this transition plan?

Mr. HAWTHORNE. We recommended within our report that it be done with a committee of one person from the AO, one from DOJ, and one from the victims group. I do not know—from our standpoint, if a contractor is working on it, they would look to that group, and I do not know that it would be of any great significance to the completion of the project by the contractor who was leading the effort.

One of the dilemmas, and again, it is something that is discussed in our report, that has been present throughout this is the lack of a central authority over the various agencies and departments that are involved here. I think that that is going to have to be resolved through the proof of concept pilot project type approach, where you come back to the Committee and say, here are the 10 things that have to go in the rulebook that people have to live by in order for this to be successful, because neither DOJ nor the Administrative Office can set those rules for the other agency.

Senator MCCAIN. Mr. Beatty, do you support the recommendation that we set up a model district and then expand the program from there?

Mr. BEATTY. As I think I indicated, at this point, we have not seen enough information. What we are really talking about now is going into an experimental phase with victim money. We have not seen any price tags involved with this. Even the idea of doing a cost-benefit analysis has to come at some price.

Again, I think it is time to really think long and hard about whether this is the proper use of victim money, up to and including the question as to whether that $14 million should be used or even the $3 million that is about to be poured into this from the fine coming up this next fiscal year.

Senator MCCAIN. I understand your reluctance to use any more money from the funds. I fully appreciate that. I am asking if you agree that the best way to do it is set up a pilot program in one district.

Mr. BEATTY. I think to solve the problem, the information control, tracking, and assessment problem, that it seems to make more sense than the previous approach. Again, certainly victims have no quarrel with that. It is a question of should victims' resources be used for that automation process.

Senator MCCAIN. Thank you.

Senator Dorgan?

Senator DORGAN. I want to thank the witnesses for providing the testimony today. Mr. Hawthorne, I think that you did the job that we asked you to do and we appreciate your work. The cooperation from the Administrative Office and the Justice Department was helpful, I think, in reaching this point.

We now are at a point where we know what does not work. That is the easiest part of this journey. If we now decide that what we have done has not worked and we are going to cut our losses and decide to move in a different direction, the next question is, what will work? I think, Mr. Beatty, that we have wasted both money and time. You are concerned about that and I understand your reluctance to want to commit more money from the fund to move in another direction without understanding that there might be some better results from that.

It seems to me going from a more centralized concept to a decentralized concept can only work if we develop from a pilot project appropriate standards, as you mentioned, Mr. Hawthorne, in 10 or 12 areas. That is going to require enormous cooperation.

Senator McCain talked about credit cards. I imagine there are 200, maybe 400 million credit cards that are active in this country. If Senator McCain goes to buy a shirt this afternoon at a department store, they will run his credit card through a little magnetic imager and in 20 seconds they will find out whether his card is good. If you can do that with a quarter of a billion credit cards, we ought to be able to in some thoughtful way take the amount of information that we need for 7,000 or 8,000 users and make it work.

It just seems to me that we have reached a point where we understand what does not work. Now the next point is we are going to disband this approach, the National Fine Center. This has failed. This does not work. It will not accomplish the results we expect it to, even if we spent more money.

Senator McCain asked the question, is there general agreement that the next step would be to try to develop some kind of a model

in a sample district and see if we can make that model work in an appropriate way and use that then as a pattern in other districts. Can that be made to work, Mr. Lee?

Mr. LEE. I think that asking the question and testing it is certainly appropriate, but there would have to be a willingness to say, it did not work, it will not work, that maybe automation does not have all of the god-like features that will enhance appropriately debt collection. Maybe a dedicated probation officer, U.S. Attorney, clerk's office, working together with just minor modifications of the systems, which I think is what Stan has been suggesting would possibly do some of this, would work to increase debt collection, which is what we are about. I am convinced that it can be increased. I am not convinced that 20 clerks in the basement of a building are particularly useful to do it.

Senator DORGAN. I understand that, but it must be improved.

Mr. LEE. I think it can be.

Senator DORGAN. The whole purpose of going to a National Fine Center was the recognition that criminal debt collection was a failure. We were not doing the job in aggressively collecting these fines and restitutions, so the point was to put together a National Fine Center. It now appears that is a failure for a whole series of reasons.

I did not know whether we were doing the right thing in undertaking this study, but it turns out that is exactly what we had to do. We had to do a study, an independent evaluation, to see if the Fine Center is going to work. The point is, it is not going to work, so now we should start over and do something different.

Ms. Cohn, can this work? I am now talking about a model in a district.

Ms. COHN. We are very committed to making it work. I think one of the other things to underscore is that as we transition, as we close down the National Fine Center, we do not have a situation that promotes criminal justice and serves victims' needs in the best way.

We have an interim system where, in many cases, U.S. Attorneys' Offices are spending their resources on processing and tracking where we would all like to see the U.S. Attorneys doing their responsibility. Our responsibility is not debt collection generally. It is enforcement where the debtor has defaulted. The Probation Office has oversight over debtors' payments, and as Congress as recently this spring recognized, the clerk of the court must receipt restitution.

So we are very eager to come up with a system. We will pledge our resources, both here and once we choose a district, to explore that. But we do think, as my testimony, and I do not want to belabor the point and repeat it all, but that there are, as we proceed at a pilot level, there are some core responsibilities that Congress has already recognized and that we should develop implementation and procedures at the district level that allow those core responsibilities to be put into place.

Senator DORGAN. Congress cannot manage programs. That is not our job. But we appropriate money in the expectation that a management pattern that achieves the proper results can be developed.

Ms. COHN. If I could add one thing, Senator.

Senator DORGAN. Yes?

Ms. COHN. One of the things that Coopers and Lybrand did find is that in different districts, personnel are working well together from the different entities. I think that if we choose a district carefully that has that foundation, where there is a commitment there and there is a certain level of automation and with direction to, within the mandate that Congress has set and Coopers and Lybrand's findings about certain core responsibilities to go forth and to try to develop some mechanisms, I think we can do a better job.

Senator DORGAN. But in the end, we want a system that works and accountability to make sure that if there are districts where it is not working, those who are accountable for the failure be brought to bear for that. One of the frustrations I have, and I know Senator McCain has because I have heard him talk about it, is the lack of accountability in Government. When we appropriate money, we need to expect on behalf of the taxpayer that we see the results.

Mr. Chairman, you asked most of the questions that I would have asked. I do not want to duplicate. I do appreciate the time and the effort of these witnesses on this issue.

Senator MCCAIN. Thank you, Senator Dorgan.

Let me just say that I would like for Senator Dorgan's and my staff to work closely with you. Senator Dorgan said we cannot manage programs, but we would certainly like to, given, frankly, the very rocky relationship that has existed between the two organizations that are going to have to sit down together, I would like for our staff to be involved as we move to step two.

Mr. Hawthorne, I think that Coopers and Lybrand has given us a great blueprint here and a good evaluation of where we are. Now the hard part, as Senator Dorgan said, is for us to move forward. If you think that a committee is the best way to move forward, that is fine, but I would like for you to decide, obviously Mr. Beatty included, how the best way that you want to proceed. If you accept the Coopers and Lybrand's recommendation you start with one district and make it a model, we would like to be informed.

The last thing I am sure you want, even less than Senator Dorgan and me, is to go through the kind of rigmarole that we have been going through over the past couple of years. As Mr. Beatty so eloquently describes it, we are not talking about some abstract theory here. We are talking about victims who do not get what they need and people whose very lives are at stake.

What I would like for you to do is sit down with Mr. Beatty and, using the recommendations that have been made, come up with a plan as soon as possible. Keep our staffs, Senator Dorgan's and my staff, involved, and the Committee staff, as well, so that we can keep up with this and not manage it but keep informed so that there are no more surprises in this program. I know that is a little bit unusual, but this certainly is also a kind of an unusual situation, as well.

Mr. Lee, did you want to add something to that?

Mr. LEE. I think that is a very appropriate way to step through this, how do we walk into the future, and we certainly would work with your staff, as we have, and Senator Dorgan's staff and DOJ. It has worked successfully.

I would also suggest that Mr. Beatty had an excellent point. Maybe it is time to stop the special kinds of coddling. Agencies have budgets for automation. They have a probation budget. They have a budget for district affairs. Maybe the discipline of paying for this out of the normal budget process should be reapplied. We have tried using the victims' money. We have used $11.5 million of it, and through closure $13 million. We are going to return $12 million, plus they were going to ship $3 million more over, which totals $15 million. That money probably should go back to the victims.

I think that if it is——

Senator MCCAIN. We are going to put that $3 million on hold, I hope.

Mr. LEE. And the $12 million that we have is available for return. I think that the budgets of the Justice Department and the Courts may be sufficient if we are going to deal with the size of the problem that Stan has suggested it is, which is torquing various systems in the Courts and DOJ. I would suggest that may be something you would like to consider, but there may be other problems that Justice has above what I am aware of, so I am just talking from the Courts as to that suggestion.

Senator MCCAIN. Ms. Cohn?

Ms. COHN. If I could just respond briefly, first to your comment about a committee. I think we did develop a good working relationship during the course of this evaluation, but I do want to underscore what I said in my testimony, that some entity has to do the basic procurement, administrative role, just as the Administrative Office of the Courts did that during the evaluation, and we believe that is appropriately the Administrative Office's responsibility.

As to the $3 million, our reading initially is that absent some action by Congress, we are obligated to transfer the $3 million and we can work with your staffs to address that issue, but obviously, it is a concern of ours.

Finally, on the final part about funding, there are a series of different kind of funding issues raised by both the closing of the National Fine Center and the interim, whatever processing and tracking that the U.S. Attorneys kind of absorb by default, as well as the pilot project and any expansion, and finally, that we did rely on the National Fine Center to perform certain responsibilities and we have not, therefore, upgraded and put in demands for—requests, excuse me—for appropriations for our debt collection facilities. Whatever the source of that money is, there will be needs.

Senator MCCAIN. I do not want to drag this out, but you are saying somebody has got to lead and Mr. Lee is saying that it can be a committee. That has to be reconciled, either now or later.

Mr. LEE. Possibly I can clarify. If the only issue is somebody to serve as a contracting officer, we can serve that function. I do believe that the decision making has to be shared and responsibility has to be shared. The contracting officer function, that is not something that is impossible to deal with, and if we have a good one, we will use it. And at some point, if he were to go somewhere else or DOJ may wish to do something with the contracting officer function, that is not the contention point. I think that partnership issue

BOSTON PUBLIC LIBRARY
3 9999 05984 392 8

is something we can work. As far as serving as a contracting officer——

Senator MCCAIN. If you cannot, let us know, OK, please?

Mr. LEE. We will work together.

Senator MCCAIN. All right. I thank you very much. I want to thank the witnesses. The hearing is adjourned. Thank you.

[Whereupon, at 4:09 p.m., the Committee was adjourned.]

○

ISBN 0-16-053762-2